



NEW YORK
REGIONAL OFFICE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
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July 22, 2022

VIA ECF

Hon. Analisa Torres
United States District Judge
Southern District of New York

Re: SEC v. Ripple Labs, Inc. et al., No. 20-cv-10832 (AT) (SN) (S.D.N.Y.)

Dear Judge Torres:

Pursuant to the Court's July 12, 2022 order (D.E. 530), the SEC respectfully submits this motion ("Motion") to seal certain portions of the parties' July 12, 2022 filings in connection with their motions to exclude expert testimony (the "*Daubert* Motions"). Appendix 1 to this Motion is a chart outlining the SEC's proposed redactions. Each document referenced in Appendix 1 is attached as an exhibit to this Motion with the SEC's proposed redactions highlighted in yellow. The SEC has met and conferred with Defendants and expects Defendants to object to most of the SEC's proposed redactions.

With a few exceptions (noted below), the SEC's proposed redactions are intended to protect the identities of the SEC's expert witnesses (the "SEC Experts").¹ As the Court is aware, one of the SEC's experts (SEC Expert 1) was subjected to extensive threats and harassment after that individual's name was publicly disclosed by counsel for *amici*. See D.E. 498. The Court granted the SEC's application to redact the names of SEC Expert 1 and SEC Expert 5 from the SEC's prior filings. D.E. 529 at 5 (redaction of name of SEC Expert 1 is "narrowly tailored to serve interests of witness safety"); D.E. 554 (redaction of names of SEC Experts 1 and 5 is "narrowly tailored" to preserve the 'higher values' identified by the parties") (quoting *Lugosch v. Pyramid Co. of Onondaga*, 435 F3d 110, 119–20 (2d Cir. 2006)).

In order to protect the identities of the SEC Experts, the SEC proposes redacting the name of each expert as well as identifying information, including contact information, educational and employment history (which could be used to decipher the witness's identity through online search engines or social media platforms), publications (including quoted portions of publications which could be traced back to the SEC Expert)², and affiliations.³ In addition to the identities of each of

¹ The SEC refers in this Motion to the experts as SEC Experts 1, 2, 3, 4, and 5—the same designations used by Defendants in their *Daubert* Motions.

² In two instances, where Defendants attached a publication by an SEC Expert to their papers (Ex. 38 (D.E. 539-3) and Ex. 43 (D.E. 542-7)), the SEC proposes sealing the entirety of those documents.

³ For the deposition transcripts of the SEC Experts, the SEC proposes redacting the deponent's name from the transcripts (including from the header of every page of the deposition transcript).

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the five SEC Experts, the SEC has also proposed redactions to protect the identities of consulting expert firms that assisted the SEC Experts, as well as employees of those firms. These proposed redactions are narrowly tailored to serve the interests of witness safety, and the SEC's application should therefore be granted. D.E. 529 at 5; *see also Walker v. City of N.Y.*, No. 15 Civ. 500, 2017 WL 2799159, at *6 (E.D.N.Y. June 27, 2017) (sealing motion for summary judgment because "the safety of the complaining witness and his family constitutes a 'higher value' which should be protected") (quoting *Lugosch*, 435 F.3d at 119–20).⁴

The SEC is also submitting proposed limited redactions to four documents in order to prevent disclosure of personal information, including financial information, of SEC Experts 1, 3, and 4, which they were asked about in their depositions. *See* Ex. 28 (D.E. 548-44) at Tr. 10, 33, 63–64, 66, 101, 123, 171–73; Ex. 37 (D.E. 539-2) at Tr. 17, 28, 33–34, 36–38, 40–43; Ex. 42 (D.E. 542-2) at Tr. 11–12, 47–55, 108. These proposed redactions are appropriate since the SEC Experts' personal and financial information implicates "significant privacy interests" and is not relevant to the adjudication of the *Daubert* Motions. *City of Almaty, Kazakhstan v. Ablyazov*, No. 15 Civ. 5345, 2021 WL 1177737, at *2 (S.D.N.Y. Mar. 29, 2021) (allowing redaction of third parties' personal financial information when such information was "essentially irrelevant to the summary judgment motion"); *see also United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) ("Where testimony or documents play only a negligible role in the performance of Article III duties, the weight of the presumption [of public access] is low."); *Matter of New York Times Co.*, 828 F.2d 110, 116 (2d Cir. 1987) (finding "the privacy interests of innocent third parties . . . should weigh heavily in a court's balancing equation"). Indeed, Defendants do not make any arguments, or even cite to, the personal information that the SEC seeks to redact in any of the papers in support of their *Daubert* Motions.

The SEC understands that Defendants are moving for leave to redact the names of third parties from their papers in support of the *Daubert* Motions and have included proposed redactions of third-party names in their motion to seal filed today. The SEC does not object to Defendants' application. If the Court orders that the names of third parties be sealed, the SEC will redact all such names in accordance with the redactions proposed by Defendants.

Due to ECF file size limitations, the SEC is not including in the exhibits to this Motion the full deposition transcript of each SEC Expert, but rather those excerpts where it is proposing to redact information *other than* the deponent's name (as indicated on the corresponding cover page of these exhibits).

⁴ SEC Expert 3 is well known in a particular academic field and has published academic research in this field that has received worldwide media attention. Some of the publications authored by SEC Expert 3 have been cited hundreds of times by other academics and researchers. Because of the high-profile nature of SEC Expert 3's work in this particular academic field, public disclosure of information about his academic research and publications could lead to his identification. In an effort to protect his identity, the SEC has submitted proposed redactions about the substance of SEC Expert 3's academic research and publications, which were cited in his reports (including in his CV) and covered at length during his deposition. Ex. 37 at Tr. 50–56, 59–60, 69, 74, 76, 113, 116, 134, 159, 161–63, 212, 227, 229–39, 242, 249, 255, 263–65, 270–71, 280, 285–86, 303–04, 315–16, 331; Ex. 3 (D.E. 548-1) at 4; Ex. 18 (D.E. 548-32) at 4. Moreover, the SEC has proposed redactions to information about lawsuits spearheaded by SEC Expert 3 against certain private institutions that also received media attention and which could be used to identify SEC Expert 3. Ex. 37 at Tr. 62–64.

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Finally, the SEC notes that certain third parties whose documents or information are quoted or described in the parties' papers in support of the *Daubert* Motions may move to seal certain information they believe to be sensitive or proprietary. The SEC will take a position on any such motions at the appropriate time.

Respectfully submitted,

/s/ Ladan F. Stewart

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cc: Counsel for All Defendants (*via* ECF)

Appendix 1: SEC Proposed Redactions to *Daubert* Motion Papers

Sealing Motion Exhibit	Docket Entry (D.E.)	Document Description	Proposed Redactions
1	536	SEC Memorandum of Law in Support of Its Omnibus Motion to Exclude	Information identifying SEC experts
2	548	Guerrier Declaration in Support of SEC's Omnibus Motion to Exclude	Information identifying SEC experts
3	548-1; 539-1	Amended expert report of SEC Expert 3	Information identifying SEC expert
4	548-2	Expert report of SEC Expert 1	Information identifying SEC expert
5	548-3; 545-7	Second amended expert rebuttal report of SEC Expert 1	Information identifying SEC expert
6	548-4; 549-1	Amended expert report of SEC Expert 5	Information identifying SEC expert
7	548-5	Expert rebuttal report of SEC Expert 5	Information identifying SEC expert
8	548-6; 549-5	Supplemental expert report of SEC Expert 5	Information identifying SEC expert
9	548-7; 542-1	Expert report of SEC Expert 4	Information identifying SEC expert
10	548-12	Deposition transcript of Defendants' expert Peter Adriaens	Information identifying SEC experts
11	548-13	Rebuttal expert report of Defendants' expert Peter Adriaens	Information identifying SEC expert
12	548-16	Deposition transcript of Defendants' expert Peter Easton	Information identifying SEC experts
13	548-18	Rebuttal expert report of Defendants' expert Peter Easton	Information identifying SEC experts

14	548-22; 539-4	Expert rebuttal report of Defendants' expert Allen Ferrell	Information identifying SEC expert
15	548-23	Supplemental expert report of Defendants' expert Allen Ferrell	Information identifying SEC expert
16	548-24	Deposition transcript of Defendants' expert Allen Ferrell	Information identifying SEC experts
17	548-30	Deposition transcript of Defendants' expert Carol Osler	Information identifying SEC experts
18	548-32	Rebuttal expert report of SEC Expert 3	Information identifying SEC expert
19	548-33; 549-3	Rebuttal expert report of Defendants' expert Daniel Fischel	Information identifying SEC experts
20	548-34	Deposition transcript of Defendants' expert Daniel Fischel	Information identifying SEC experts
21	548-35; 549-2	Deposition transcript (first deposition) of SEC Expert 5	Information identifying SEC expert
22	548-36	Supplemental expert report of Defendants' expert Daniel Fischel	Information identifying SEC expert
23	548-37	Deposition transcript of Defendants' expert M. Laurentius Marais	Information identifying SEC expert
24	548-38; 549-6	Expert report of Defendants' expert M. Laurentius Marais	Information identifying SEC expert

25	548-39	Supplemental expert report of Defendants' expert M. Laurentius Marais	Information identifying SEC expert
26	548-42; 545-3	Rebuttal report of Defendants' expert Kristina Shampanier	Information identifying SEC expert
27	548-43	Deposition transcript of Defendants' expert Kristina Shampanier	Information identifying SEC expert
28	548-44; 545-2	Deposition transcript of SEC Expert 1	Information identifying SEC expert Personal and financial information of SEC expert
29	532	Defendants' Motion to Exclude Testimony of SEC Expert 2	Information identifying SEC expert
30	533	Defendants' Memorandum of Law in Support of Their Motion to Exclude Testimony of SEC Expert 2	Information identifying SEC expert
31	534	Gressel Declaration in Support of Defendants' Motion to Exclude Testimony of SEC Expert 2	Information identifying SEC expert
32	534-1	Expert report of SEC Expert 2	Information identifying SEC expert
33	534-2	Deposition transcript of SEC Expert 2	Information identifying SEC expert
34	537	Defendants' Motion to Exclude Testimony of SEC Expert 3	Information identifying SEC expert
35	538	Defendants' Memorandum of Law in Support of Their Motion to Exclude Testimony of SEC Expert 3	Information identifying SEC expert

36	539	Ceresney Declaration in Support of Defendants' Motion to Exclude Testimony of SEC Expert 3	Information identifying SEC expert
37	539-2	Deposition transcript of SEC Expert 3	Information identifying SEC expert Personal and financial information of SEC expert
38	539-3	Publication authored by SEC Expert 3	Seal exhibit in its entirety
39	540	Defendants' Motion to Exclude Testimony of SEC Expert 4	Information identifying SEC expert
40	541	Defendants' Memorandum of Law in Support of Their Motion to Exclude Testimony of SEC Expert 4	Information identifying SEC expert
41	542	Ford Declaration in Support of Defendants' Motion to Exclude Testimony of SEC Expert 4	Information identifying SEC expert
42	542-2	Deposition transcript of SEC Expert 4	Information identifying SEC expert Personal financial information of SEC expert
43	542-7	Publication authored by SEC Expert 4	Seal exhibit in its entirety
44	543	Defendants' Motion to Exclude Testimony of SEC Expert 1	Information identifying SEC expert
45	544	Defendants' Memorandum of Law in Support of Their Motion to Exclude Testimony of SEC Expert 1	Information identifying SEC expert

46	545	Oppenheimer Declaration in Support of Defendants' Motion to Exclude Testimony of SEC Expert 1	Information identifying SEC expert
47	545-1	Expert report (and attached exhibits) of SEC Expert 1	Information identifying SEC expert
48	545-6	Rebuttal expert report of SEC Expert 1	Information identifying SEC expert
49	546	Defendants' Motion to Exclude Testimony of SEC Expert 5	Information identifying SEC expert
50	547	Defendants' Memorandum of Law in Support of Their Motion to Exclude Testimony of SEC Expert 5	Information identifying SEC expert
51	549	Kim Declaration in Support of Defendants' Motion to Exclude Testimony of SEC Expert 5	Information identifying SEC expert
52	549-4	Deposition transcript of supplemental deposition of SEC Expert 5	Information identifying SEC expert
53	549-7	Exhibit 16 to Supplemental deposition transcript of supplemental deposition of SEC Expert 5	Information identifying SEC expert